



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



VINDICATION
OF THE
LAW OF ENGLAND:

SHEWING THAT
“MESNE LORDS,” DERIVATIVE LESSORS,
OR
MIDDLE-MEN,
HAVE NO RIGHT,
Either at Common Law or under any Statute,
TO LEVY DISTRESS.

By U. O'DEDY, Esq.
OF LINCOLN'S INN, BARRISTER AT LAW.

LONDON:

PRINTED FOR W. REED, LAW-BOOKSELLER, 26, BELL-YARD,
LINCOLN'S INN; AND J. EBERS, OLD BOND-STREET;

By L. Harrison & J. C. Leigh, 373, Strand.

1812.



DL
AOC
UXV

A VINDICATION
OF THE
LAW OF ENGLAND.

TO THE PUBLIC.

THE measure lately submitted to the House of Lords, by Earl Stanhope, for the relief of the tenantry of the United Kingdom, involves so many deep and important interests, has excited such hope and fear in millions of suffering people, that I cannot refrain from making a few observations on the real point now at issue.

In reading over the Bill which was brought in on this subject, and which is in progress through Parliament, one must be forcibly struck with the talents and ingenuity which mark its scope and provisions. The main clause is a simple proposition; but so contrived, that it admits of a double meaning. It is either declaratory of the existing law, or supplies the want of it. Taking for granted, however, that the latter is the impression of a great many, I shall contend for the former, and undertake to establish, that the practice of compelling occu-

pying tenants to pay the "same rent over and over to the middle-men," is not only unjust, but *illegal*.

If I should be so fortunate as to succeed in vindicating the law of the country, and shewing that the oppressed can have effectual relief; that for public grievances there are adequate remedies; that the injured can be righted; and that sacred justice rules the land; then I shall feel myself more than compensated, by the recollection of having done my duty: but if I fail, still, from the nature of the object, I shall lean upon the humane and liberal for indulgence.

And, here, I beg leave to return my warm and sincere thanks to all those noblemen and gentlemen who have been pleased to honour me with their approbation of my "*View of the Law of Landed Property in Ireland*," and conveying, at the same time, sentiments most favourable to the tenantry. I regret that I am not at liberty to mention names, but I can say, that amongst those who feel for the wretchedness of the peasantry, are some of the greatest men in the kingdom; as well as the ablest lawyers in and out of Parliament.

I could not, however, omit the name of the lamented Mr. Perceval, without being conscious to myself of ingratitude. His view of Irish politics, also, commands me, in a particular manner, to do him justice, and acknowledge

that he meant to redress the grievances of the mass of the people.

For proof of his natural benevolence, and of the soundness of his policy in this respect, I shall subjoin an extract from a letter written by his own hand, which cannot fail to be embalmed in the hearts of genuine Irishmen, and to raise a monument to his memory that shall never perish.

“The subject is undoubtedly one of great interest and importance, and if any remedy for the evils complained of can be adopted, consistently with justice to the landed interest, Mr. Perceval would be exceedingly glad to assist in its success.”

DOWNING-STREET, 13th April, 1812.

Earl Stanhope has had the original, as well as every other communication received by me on this great subject.

THE right to levy distress must be claimed as either *original*, *derivative*, or *conventional*: on which of these grounds do the middle-men take their stand? If they claim it as an original right, and have their claim allowed, then the head landlord and his lessees would be placed by the law of England on an equal footing; perfect equality would supersede feudal distinction, and trample upon the honours, the attributes,

6. A VINDICATION OF THE

and supremacy of the lords in demesne. The noble proprietors of the soil, the bold barons should stoop to their feudatories, and submit to rank with "base villeins." But this is not their condition. They are now as exalted as they were one thousand years ago, in the law of the *land*, and *tenants* are still equally "base" and degraded. The great proprietor is not, indeed, at present in the full enjoyment of ancient splendour. The 12th Charles II. has abolished knights' service and tenure in capite, &c.; but still the tenant in fee, or lord in demesne, is acknowledged as a superior, who has rights inseparable from his dignity and high estate; he is entitled to the remedy of distress at law, because it has been preserved to him out of the wreck of his former prerogatives, and is now incident to such as are remaining.

When he grants a lease of any part of his inheritance, let the term be ever so long, he retains the fee; he has in him the reversion, or, to make the subject quite intelligible to the meanest capacity, he does not give away one particle of the *land*.

But lessors may cast all their moveable chattels into the sea—the *guinea-men* may, indeed, scatter their pelf amongst the poor without any restraint whatever. The law permits the free use of the produce of the soil to its cultivators, and to those who are entitled by contract or

otherwise to share it with them; but it watches day and night over the *land*, and maintains its rights with the utmost jealousy.

On this ground the lord of the fee is, of original right, *exclusively* entitled to the remedy of distress, which was *inseparable* from some, and *incident* to all feudal services, particularly to rent service; and is, therefore, on the very principles of ancient tenure, *incident* to his rents in the present day, by the existence of service, as well as *inseparable* from the reversion.

I should observe, that although if I were writing a treatise on law generally, it would be proper to trace the rise and progress of rent charges; and how the grantee of a rent charge might stand as to the remedy of distress; how persons seized, not only of rent charges, but of rent seck, common of pasture, and such like inheritances that do not lie in tenure, are entitled, some at common law, when they comply with what it requires from them, and others by statute, to levy distress: yet the discussion of these points, as well as of the freehold rents, to which the remedy of distress has been extended by the 32d of Henry VIII. and the subjects to which it was also extended by the 7th of the same king, would be a waste of time, in reference to the main point, which does not even remotely affect them. I have noticed them now, therefore, merely to indicate, that this sub-

ject has been well considered in all its possible bearings, which shall appear fully, if the enemies of the people make it necessary, by introducing irrelevant topics, for the purpose of defeating the real question.

In order to make this subject, which appears to many both difficult and mysterious, intelligible to the meanest capacity, I shall depart from the usual method of submitting the case involved in technical phrases and antiquated *law-craft*: accordingly, my statement shall be made, without stiffness or affectation, in the humble garb of a plain narrative.

Towards understanding the effect of the celebrated statute of *Quia emptores terrarum*, or the 18th of Edward I. it is necessary to premise, that the mesne lord, or feudatory, who had purchased from the lord in demesne or seignior, was in the habit of underletting to others, upon the very terms, services, saving of *manorial* rights and privileges, under which he himself held from his own feoffor, donor, &c.; or, in other words, when this feudatory let to the terre-tenant, or actual cultivator, he immediately exercised all the power, and invested himself with all the honours, royalty, and prerogatives which belonged exclusively to the great proprietor.

This abuse was not, however, long confined to the first feoffee, or immediate feudatory to

the head lord; but, like all other innovations tending to give power and gratify the vanity of little man, was rapidly dispersed over the surface of the land.

C very naturally said, that he had as good a right to carve a manor out of the manor of B, as B had to carve one out of the seigniorship of the lord who held from the king: and, by an obvious train of reasoning, founded upon this assumption, that he was as great as the king himself, quoad his feoffees, grantees, &c. that he could not discover why he might not have his villein *regardant*, as well as villeins in *gross*; and display, at once, all the Gothic magnificence with which seisin of land was clothed, or even exceed in slavish mummary the turbaned tyrants of the East.

Subinfeudation, or underletting, went on in this manner for a length of time, and would have continued, perhaps, for many ages, had not the oppression of those middle-men excited the great landlords to a sense of their own dignity, and rebuked the torpor with which they beheld the cruelty inflicted on the people, by the prostitution of justice and the subversion of law.

Stung, at last, by remorse and shame, at the intolerable grievances with which the poor occupants were overwhelmed, they listened to the cause of suffering humanity, and acted a part

worthy of English barons. In this spirit and with these honourable feelings, they had the statute of Westminster the third, or of *Quia emptores terrarum*, passed, whereby it was enacted, and remains in full force at this day, as far as any thing is left for it to operate upon, by the 12th Chas. II. or by operation of law analogously to ancient tenure, "That from henceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them, so that the *feoffee shall hold the same lands or tenements of the chief lord of the same fee, by such service and customs as his feoffee held before.*"

By this act, which confirmed to every freeman the right to dispose of his land as he pleased (a wonderful concession, attended with the happiest effects), the chief proprietors, or lords, not only secured to themselves their escheats, wardships, &c. which the middle-men had usurped, but effectually stript the latter of all those other feudal services and incidents which they had hitherto levied, and exercised in a more ample manner than the barons themselves had ever done.

I shall illustrate this point by an extract from Coke upon Littleton, page 144.

"By act of law," says our great author, "one rent or service may issue out of another, as if A, before the statute of *Quia emptores terrarum*,

had given lands to B, to *hold* to him by fealty and ten shillings rent, and B had made a feofment in fee to C, &c. whereby there was a mesnalty created: this would be rent and service out of rent and service; and if the rent be behind, the lord may distrain upon the land for his rent, for both mesnalty and seigniorie doe issue *out of the land*, the mesnalty immediately, and the seigniorie mediately, which is worthy of *due consideration and observation.*"

This extract so clearly shews the precise mode on which the old system was conducted, as to render any comment quite unnecessary. But with a view of establishing the charge of oppression brought against the middle-men in levying several distresses on the same premises for rent accruing "out of the same land" from which "both mesnalty and seigniorie do issue," I shall take one other extract from the same authors above quoted, in proof of what has been already said respecting the change produced by the statute of 16th Edward I. in favour of the occupants who were relieved by it from all distress, but such as was incident to the services of the head landlord.

"If there be lord and tenant by fealty and certain rent, and the lord by deed grant the rent in fee, saving the fealty, and grant further by the same deed, that the grantee may distrain for the same rent in the tenancy, albeit a dis-

tress were incident to the rent in the hands of the grantor, and although a tenant attorne to the grant, yet cannot the grantee *distrain*, for then *the tenant should be subject to two several distresses of two several men.*"

The *policy* of the inhibition, in this case, is worthy of the utmost attention, and repels the little astute cavilling which would attempt to distinguish between two several distresses flowing directly from the act of the grantor, and distresses created by operation of law. Such abstract puerility, in order to sustain oppression, is unworthy of the human understanding and disgraceful to manhood.

"And so it is, if the lord, in that case, grant the rent in taylor, or for life, saving the fealty, and further grant that the grantee may distrain for it, albeit the *reversion* of the rent be a *rent service*, yet the *donee* or *grantee* shall not *distrain* for it."—*Co. Lit.* sec. 226.

The justice and fairness of the principle laid down in this rule of law, must command the veneration of all men for a code, which, when thoroughly understood, and practically distributed, proves itself "a law of liberty" in the words of Blackstone, "the law of reason" in the words of Littleton, and "*equal justice*" in the words of Lord Coke.

Let the vulgar libellers of our jurisprudence read the following reasons: "For then the tenant

should be subject to two several distresses of *two several men*."

If the grantee, &c. were to levy distress, as of original right, it would be in the nature of a disseisin of his feoffor, grantor, &c.; for by the statute of Edward just noticed, the distress remains as an incident to the seigniorship or reversion, and is inseparable from fealty, at the least. The grantee could not, therefore, distrain for any thing of a higher nature than rent, *without service*, which must be always *seck*, in its naked state.

Besides the violation of right which such an usurpation would necessarily introduce, the cruelty of permitting two several men to levy *two* several distresses for rent accruing out of the same tenure, upon any pretence whatever, appeared so great, that our author could not suppress his indignation and horror against such an outrage.

The second proposition laid down goes to the utmost extent of one's wishes: for "albeit the reversion of the rent be a *rent service*," yet, the *grantee*, &c. shall not distrain for it, because the occupants should be subject to two several distresses of two several men.

If these oracles of the law of England were to arise from the dead and to hear it asserted by modern lawyers, that not only two several distresses, but an indefinite number, may be levied

on the same tenure for rent which the poor occupants had already paid to their own lessor, what would they think of us? But what should we think of ourselves, if it were really true, that not a single rule or principle could be found in our whole civil or municipal code under which oppression of this kind might be removed or corrected? What would the enlightened of other countries say of institutions which do not contain, according to the advocates, one principle capable of being applied to the redress of the most harassing grievance that can be imagined?

The friends of sound law and of equal justice may, however, console themselves in the certainty, that this imputed disgrace is no part of the law of England, but the result of ignorance, and a blind abuse of its sacred principles—the cant of flimsy revilers—the adulation of sycophants, who, to worm themselves into the favour of wealthy proprietors, mix slander with perversion, and thus minister to their selfishness.

The misconception which obtains so generally on this point, is to be attributed, in a great degree, to the hurry with which the feudal law is commonly read by those who condescend to look at it at all, and they are very few indeed; because the study of it involves great attention, in order, not only to trace all its ramifications,

but to comprehend its rise, progress, and application as an immense body by itself. There is another reason still more cogent with great numbers for neglecting this study, namely, that they find it *unprofitable*. This is true, but they may be certain, that, without a knowledge of the feudal system, they never can understand the law or the constitution of England.

Now with reference to the levying of distress as incident to rent service, &c. I shall proceed to observe, that the great barons or seigniors held their land under the crown, the king being considered, even at the present day, lord paramount, or proprietor of all the land in his dominions. Every baron, or lord, was empowered to hold a court, called Court Baron, for redressing grievances and settling disputes amongst the tenants of those manors, formerly called baronies, lordships, or seigniories.

But by the statute of *Quia emptores terrarum*, all the feudal services, and their incidents, having been resumed by those great proprietors, to the exclusion of all feoffees, grantees, &c. in future, who till then had assumed them, it follows, as clear law, that none but such as are entitled to some *service* in the spirit and by the rules of ancient tenure, can have distress at common law, because it is incident to *service* only of some kind or other. "It is called a rent service," says Coke, "because it hath some

corporal service incident unto it, which at the least is *fealty*."

In the case of a gift in tail, lease for life or years, the fealty is inseparable from the reversion, so as the donor, or lessor, cannot grant the reversion over, and save to himself the fealty. But the rent he may except; because the rent, although it be incident to the reversion, yet is not *inseparably* incident.

Homage was the highest honour, but fealty the most sacred; and although, according to the generality of the writers on the feudal system, fealty could not have been separated from homage by grant, yet it might by *extinguishment* of homage, as in case of a surrender of all services by the seignior.

A man may hold also by fealty alone; and distress would be inseparable from such tenure at this day.

I have noticed fealty, in particular, because it remains the same as when Lord Coke wrote, not having been altered or affected by the 12th Charles II. or by any other statute: and although it is not exacted, yet the title to it is good, and, if required, must be *iterated* on every change of the lord. Even copyholders are obliged to enter a *respite* of fealty at this day. It should be known, likewise, that it is due from all tenants, but tenants by frankalmoigne, and such as hold at will or by sufferance.

It is indisputably established, therefore, that all tenants in fee simple, and lords of manors, are not only entitled of common right to distress against their tenants, as well as all occupants; but are *exclusively* entitled to it, as an incident to fealty, which is inseparable from the reversion, and which a lessee can never receive from a lessor.

I say exclusively entitled, because every lessee, excepting those at will or sufferance, shall do fealty, instead of receiving it. But distress may be levied, also, on tenants at will at common law by virtue of the reversion or inheritance.

Fealty is in the present day, as much as formerly, a complete bar to the use of distress by all derivative lessors, if there were no other impediment, who are precluded from setting up any claim to it, of original right, or as a thing that runs to them with the land. They should know, therefore, that it is incident to a high and solemn service, inseparable from the reversion in fee, for which they may be called upon, and shall perform it, in that case, with the utmost reverence and humility. *Sic transit gloria mundi.*

Indeed it is impossible for a man to read the 12th Charles II. which abolished all knights' service, and service in *capite*, &c. without entertaining the highest opinion, both as law-

yers and statesmen, of those who effected this great object.

They did not, as *radical* reformers would have done, overthrow the whole system, or destroy all services; but, like men who thoroughly understood the feudal law, they left such services untouched as were indispensable to sustain the existing fabric.

They abolished those prerogatives which harassed and plundered the people, but they left fealty, in particular, to protect the tenantry, in the spirit of the great statute, from all derivative lessors; thus distinguishing the original or feudal rights of the head landlord, to whose *tenure* this solemn privilege was always attached, from the lessee-lessors by subinfeudation or underletting.

The lord of the manor, or any other head landlord, does not gain any thing by the service of fealty, but the *honour* of being designated by the English Justinian, as the guardian, the trustee, the dignified protector of the people. This awful service makes the head landlords responsible to the state, as far as the relations of landlord and tenant go, for the local administration of justice, for public tranquillity, and the happiness of all the tangible representatives of the soil, that is, the actual occupants or cultivators of the land.

It is true, that the reversion in fee comprehends the remedy of distress, to the exclusion of all lessees : but the law has been ever fond of throwing guards round the inheritance, as a matter of state policy ; and therefore the service of fealty was left standing by the *omnipotence* of parliament, as a Gothic portal through which all the tenantry must approach the lord in his *demesne, as of fee*, who is the great feudatory, or *very* tenant to the king.

The law of England, which is strictly feudal in its spirit and grand outline, does not regard *parchment* landlords in reference to the present subject, much less does it tolerate any oppression towards the tenantry by derivative lessors, who are unknown as persons having any services attached to *their* tenure, as they improperly call it. They have tenure indeed, but it is a tenure which binds them to *perform* services, instead of exacting them.

Our common law passes over all intermediate claimants on the profits of the land by contract, and connects the head landlord with the occupying tenants by the reciprocity of *protection* and *services*.

Therefore, it is enacted by the second chapter of the statute of *Quia emptores*, setting forth, that if part of the land be sold, the services shall be apportioned.

“ And so in this case,” proceeds the statute,

"the same part of the service shall remain to the lord, to be taken by the hands of the feoffee, for the which he ought to be *attendant* and *answerable* to the same *chief lord*, according to the quantity of the land or tenement sold for the *parcel* of the *service so due*."

Thus the king, as lord paramount, is supposed to have immediate supremacy over his feudatories, or the lords in demesne, *as of fee*; who are likewise considered as having controul over the occupants of the land, for state purposes, under the service of fealty, at the least, which has been left to assist in preserving the inheritance or reversion, from which, in law, it is inseparable.

This is nearly tenure in chivalry, which was the most honourable, or, as it has been well described, the pure or proper feud; contradistinguished from tenure in socage, or the improper feud.

The first was very simple in its mode, and truly chivalrous in its operation and effects, as long as it continued pure. But when the improper feud succeeded, its many advantages drew after it also very many most injurious anomalies, which prostituted the high spirit and honour of the old soldier to the basest purposes. Amongst these is the abuse in the exercise of the remedy of distress by derivative landlords.

The statute of the English Justinian empowered men to buy and sell land, or to do what they pleased with it. The law made it a marketable commodity for general purposes advantageous to the entire community. Every man had a right to derive all the profit he could from the sale or the use of it. But the comprehensive mind of our great king and legislator foresaw, that this benefit could not be conferred nakedly, without entailing every species of injustice and barbarous oppression on those who should be occupants.

He saw that the mass of the people must, by the operation of the intended measure, be reduced to wretchedness, degradation, and slavery, under the infliction of pains and penalties, in the shape of feudal services. *His* magnanimity disdained to compromise the honour of the nation, or the character of the people, in order to gain or conciliate their local tyrants. *His* noble soul spurned the *expediency* of modern politicians, which would subjugate the largest and most valuable part of society to a few *contractors*. *He* resolved, therefore, with a boldness peculiar to the truly great, to crush the tyrants and raise his people; to interpose the law between all disputants; and, in every case, to send his own writ *greeting*, or inviting the party against whom complaint was made before him, in order to do and to receive distributive justice according to *due process*.

The *highlers*, the *sham* landlords, the guineamen, were not any longer allowed to seize the people by the throat, or clap the execution of distress, without notice, into a poor man's cabin, and sell every thing, for less than half its value, to *themselves*. These oppressors could not then pursue British subjects, under the pretence that they were running away with rent, or empower the *drivers*, like blood-hounds, to tear them to pieces, without redress or any protection under the law of the land.

This great *prince* did not, by his statutes, or any of their clauses, libel the people, as the acts of modern times have done. *His* statutes never began with a *WHEREAS* against the tenantry, to justify the cruelty of the landlord; on the contrary; he called them "poor men," as in the statute of Vouchers, or twentieth of his reign, anno 1299, reciting the infamy of the landlords. The third clause goes on to say, "And likewise, when such *base persons* have warranted every one for his own portion that he ought to warrant, he may defend himself by the body of his servant procured and hired by them that hold baronies; and so upon one writ and one demand there were two or three wagers of battail, the which was a hard and perilous example for *poor men*, in time coming, that shall be demandants against *great* and *rich* men, which will defend themselves by the *malice* aforesaid." These are the words of an enlightened man, in-

dicating the feelings of an expansive heart, and the wise policy of a patriot-king.

Acting on a system which should comprehend the general interest, he permitted, therefore, the purchase and alienation of land; but to counteract the evils which he had anticipated from the feudal services, as hitherto exacted by the mesne lords, he restored, in effect, tenure in chivalry, and committed both *himself* and his *people* to the *honour* of the great barons.

Thus did he lay down the two greatest principles of legislation that were ever conceived by man, and both deduced from the extremes of tyranny.

By reserving the feudal services and their incidents to the great proprietors, he confirmed the order of nobility, and invested it with all the efficient splendour which should always belong to personages associating, from their rank, with the ruler of a mighty empire: but he did more; for he shewed them, by his own example and precepts, that real dignity consisted in doing strict justice, and contributing to the happiness of our fellow-beings.

His second principle encouraged industry, and solicited the resources; the competition; the energy, and all the talents which could be brought into operation; because the profits of every man's labour were now secured by the law of due process. His house was truly his castle.

for his property as well as for his person under our Justinian.

In this view, the statute of *Quia emptores* has proved more beneficial, practically, than *Magna Charta*, and would do more, at this day, towards tranquillizing and conciliating the people of Ireland, if given to them, *in substance*, than all that has been ever done, or that might be attempted in any other way, towards accomplishing this most desirable object.

Let England *hold by the laws*, and she cannot fail to triumph over the common enemy. Let her give them practically to the Irish, and they *must* feel the benefit of English connection.

The *laws* comprehend our rights, our independence, our liberty; they contain every thing essential to human happiness and national glory. Let the fulness of the law be the poor man's protection; and, by his fireside, let him know and feel, that the lord of a palace cannot pounce upon his person or his chattels; but that the first intimation shall come through a gracious message from his sovereign, who undertakes to adjust their differences, and, for this purpose, commands their attendance before him.

This is "equal justice," "the law of liberty," "the rule of right, and the principle of reason."

Here we find the great luminaries shining forth, and dispelling the mist, by demonstra-

tion, from before the eyes of those crawling practitioners, who insist on] the remedy of distress and the oppression of the industrious people; who call law, the subversion of every principle of natural and municipal justice; who decide that *wrong* is right; that the antiquity of an abuse or a crime sanctions the *practice*; that whatever is beneficial to a few, however injurious to the multitude, should be incorporated into our system; that plunder may be legalized, and the plunderers be irresponsible; that the judges of England should participate in the hideous atrocity of compelling the "poor man" of Edward I, to submit to successive distresses for several rents due to and from perfect strangers with respect to him, and this even after he shall have complied with the law, by performing his own contract.

I am willing, however, to treat such persons with every indulgence; for amongst them might undoubtedly be found several well-meaning individuals, who received their impressions without having well considered the subject either in point of law or of policy. The great mistake seems to be, that no distinction is ever taken between the law as it stood *before* the act of *Quia emptores*, and *subsequently* to the passing of that statute.

In all the books which relate directly or indirectly to the law as affected by that act, there

successful on this important subject; for the most wrong-headed cannot presume to resist mathematical demonstration.

Let the center of a circle represent the head landlord, with as many radii terminating in the circumference as he had feudal services. Before the statute of Quia emptores, the mesne lords, who usurped his rights, necessarily entered within the circle, which they cut, and were, mathematically, *secants*.

But by the passing of the statute, those feudatories were made *tangents*, for their own benefit, on the whole, and for the security of the empire. As tangents, they touched the circle, without entering, *or cutting*, or disfiguring it.

Such persons, in the words of the law, *savour-ed* of the realty, and whilst they paid obeisance, at any point of the circumference, to the head lord, for reasons of *state*, they had the gratification of knowing and feeling that they were independent of him, within law; at the same time, that they were *equals* amongst one another, by the foresight of the great Edward. For example, two tangents drawn from the same point *without a circle*, mathematically speaking, are equal one to another.

And as it would appear from a triangle constructed accordingly, that its angles and their opposite sides should be equal: so the derivative lessors, being originally lessees, are, amongst

themselves, perfectly *equal*, and, with reference to the head lord, are equal also amongst themselves; because he can come with distress upon which ever of them happens to be occupant of the land at the time his rent accrues due, if left unpaid, contrary to the stipulation with his own lessee.

He makes no distinction, nor is there any in the quality of their tenure, with respect to the services due to him: of course, they are treated most philosophically, because left to the enjoyment of equality and the rights of man! If there should be any of them who might not relish the thing, because it *savours* a little of democracy, still, poor souls! they must bear the hardship patiently.

Besides the gross injustice of levying several distresses, in the words of Littleton, and the wisdom, on the other hand, of excluding those mesne oppressors from enjoying feudal services, there was another ground still higher, and which is worthy of the consideration of statesmen in the present day: I mean, the policy of being able to secure the attendance of the physical force, or of that largest and most warlike description of the people, called peasantry, in case of invasion.

For the high estimation in which they were held amongst us in ancient times, I have only to refer to Littleton and to Lord Coke, who

are lavish of their praises on them, and sanction their own views by some apposite and very fine classical quotations.

Let us suppose, then, an enemy to have landed shortly before the passing of the statute of *Quia emptores*, and that the king called on his great barons to furnish their resources, or to perform their engagements by tenure. In compliance with this just demand, the bailiffs should summon the feudatories, or mesne lords, successively: not one of whom, however, could be found on the estates, such having been in the actual occupancy of the cultivators or peasantry. And when the agents should call, for instance, on Richard Roe, to come and appear; the answer of the king's, or baron's, messenger must have been, *Non est inventus*. John Anoakes, come forth to defend your king and country: answer, *Non est inventus*; or, he ran away with a bag full of guineas.

This having been the actual state of things, Edward permitted such persons to make all the profit they could of the land; but he took especial care to bind the peasantry to his interest, and to identify them with their country.

In times of peace, mesne lords might be useful, when restrained within bounds, and, on that account, they were allowed a kind of ephemeral existence.

The great statute properly reduced them to

the condition of landed chapmen; and this was perfectly right, because it established the feudal gradation from the king downwards, and comprehended the entire community. There is an additional reason, however, for attending to the spirit of this state of things at the present day; and that is to be found in the principles recognized at the Revolution with respect to our sovereign, who is not only proprietor of all the land in the kingdom, but the representative also of the majesty of the people, for *their* interest, exclusively, in both capacities. But as the most of those ancient services are now superseded by the constitutional and necessary practice of applying to parliament for the aids and supplies that used to have been levied and exacted arbitrarily, as ship-money was at no very remote period; therefore, reason and sound policy demand that the legislature should pay the most anxious attention to the substantial interests of the tenantry.

The latter are always to be found on any great emergency, whatever might become of the landlords; whether they seek foreign climes, like certain birds of passage, or lie torpid, like silkworms, or other insects wrapped up in leaves, till the *gale* days bring the painted things, fluttering on the wing, amongst the people. Be this as it may, the peasantry in general stand

by the land, towards which they never cease to entertain a very great attachment.

It is scarcely requisite to say, in furtherance of this duty, that they likewise furnish to the state all those taxes drawn from the soil, and to the landlords their respective profits or rents, as a compensation for the liberty of working what would otherwise remain inert and unproductive. They receive nothing more than leave to sweat and toil; and if they should have undertaken to pay more for their licence than the profits might be worth, it should be recollected, that they are liable to be harassed and seized upon by the law, which is often, on this account, converted into an instrument of vengeance against a fellow-creature, because he was not able to accomplish an impossibility.

As lawyers and landlords, it will do very well to talk of undertakings and contracts; but the statesman who looks upon such matters as the offspring of civilization, for social and general purposes, must rebuke the arrogance, the selfishness, and apathy that could injure a class to whom we are all most deeply indebted. What sight could be more offensive to the liberal and humane, than a great baron, balancing guineas, and reckoning the grains or particles of matter contained in the glistening object of his adoration, instead of holding in his hands the scales of eternal justice?

Would not one exclaim, that the days of chivalry are gone, and those of calculators had followed, to the disgrace of the old English character? Money has, indeed, destroyed the morals of the people, in all nations and all ages; gold, in particular, has had attractions, which seldom failed of success: and hence have arisen those corruptions, vices, and crimes that every day overturn governments, and occasionally brutalize the people. It is to be hoped, however, that as this country has escaped from the dreadful effects, though not from the contagion, we shall never again witness *gold* resuming its empire over the human mind, or debasing the intellectual faculties, by incrusting upon them the dross of very metal.

Paper possesses, as a medium of currency, much greater advantage than the money of Lycurgus, because it will not *keep* so long, for rats or moths might consume it; and therefore men will neither hoard nor be avaricious: and as avarice is undoubtedly the parent of most vices, and the basest of any, it follows, that as it cannot any longer be produced by gold, or by its substitute, to any dangerous extent, virtue must succeed, and all the charities.

This unforeseen and happy change will effectually regenerate the country, and produce a reform of itself, greater, both politically and mo-

rally, than has been ever accomplished or expected.—a *radical* reform indeed, or conversion from the idolatry of mammon, to the worship of true religion, which inculcates love, generosity, justice, and a *communion* of interest, as well as of all the saints in the kalendar.

It is said by the advocates, that the great barons of Edward I. had no object in view but to secure their wardships, and other lucrative services, and that this has been always the object of the landed interest. I am not prepared to deny that such was the ruling motive of a great many of them. There were probably many avaricious, selfish, and degenerate noblemen in those, as well as in subsequent ages; but I am not, therefore, to assume, that because their object might have been base, that the measure itself is unsound and base also. On the contrary, I look at the policy, principle, and effects of the statute, and I discover immediately, that, whatever had been the view of particular individuals, it was, in itself, the conception of an enlarged mind, of consummate wisdom, and of philosophy, reduced to practice for the benefit of mankind.

Supposing, however, that those early barons were the mean and contemptible wretches whom the advocates of the landlords would represent

them, for the sake of carrying their point, what do they gain by the assertion? Those barons took from the mesne lords the power of levying distress for the services which belonged to such barons; and what is the substance of one of Earl Stanhope's propositions? Why, that the mesne lessor shall not be able to levy distress for the whole rack rent, and then leave the head landlord to recover as well as he can from the ruined tenantry—ruined too by the exercise of the very power entrusted to the latter, exclusively, for his own benefit, and for the protection of the occupants of the land.

The argument, even in this way, is stronger in favour of the cultivators, and against the middle-men, than it could be put in any other; because here it works practically, and demonstrates, not only the gross injustice done to the poor occupants, but the injuries that are actually inflicted on the head lords themselves, by those self-created landlords, who overtop, in many instances, the great proprietor of the soil.

I rejoice as much as any man, to see others rise in the world by their talents, or their industry; but I would not permit them to trample upon the laws, when they had elevated themselves, or to rest their pretensions on arrogance and tyranny.

There is not only a peculiar cruelty in the

idea, but a premeditated malice against the human species. It is a kind of proclamation, setting forth, that multitudes are bound to supply luxuries to one man—that they shall administer to his artificial appetites—provoke his gratifications—debase themselves into a state of servitude—pay homage on their knees to the waywardness of a tyrant's will, who, to requite their services, might condescend to trample upon them like worms, into which this monster is ultimately convertible.

Who can dwell on such a state of things as this without feeling indignation? Who that venerates justice and wishes to advance or preserve civilization with all its benefits—who that loves freedom, or is devoted to the rights of Britons and our happy constitution, but must be struck with horror at a system subversive of all order, law, and humanity?

If it were expedient in the time of Edward I. to distinguish the head from the mesne lords, for purposes beneficial to the community, and upon principles of clear, legal right, it must be conceded that the expediency of such a measure is imperative at the present day, when the head lords are equally great in rank, and much superior in education, manners, and feelings; when our mesne landlords, also, are not invested with manorial privileges—are not purchasers

in fee, as formerly, nor, in general, "tenants of the freehold," but termors and "base villeins," in the proper language of the law of the land.

It should be recollected, likewise, that the tenantry of those early times were in a state of political and religious barbarism, and scarcely fit for enjoying any legal right or civil immunity. This, however, was not their fault, but that of jealous tyrants, who have always, and will ever continue to tremble at hearing any mention of the *people*.

Viewing this melancholy condition of human nature, which is to be traced to the feudal system, I am not disposed to vindicate the character of our ancient aristocracy, as a *body*, or to defend their crimes, their despotism, and brutality. In reading the *legal history* of early times, which is by far the most unerring, I find, here and there, great efforts made by one or more individuals to limit the power of the crown, or to overthrow the sovereign: but, in order to accomplish the object, the reformers or revolutionists were always obliged to cultivate the good wishes and support of the very people whom they hated—to promise them rights and privileges—to impress on their minds, that the proposed change would raise them from abject submission, and confer both independence and happiness.

When, on the other hand, the king became alarmed by such practices, or was the aggressor,

for the purpose of humbling the pride or punishing the disobedience of his great vassals, he, most fortunately, was likewise under the necessity of addressing himself to the people—his *dearly beloved subjects*, who, he was sure, would not desert him, or refuse to assist in putting down their oppressors; and, to show his royal *disinterestedness*, usually made large concessions, which consisted of *parings* from the feudal rights and ascendancy of those Gothic barons.

Thus it was that, after ages of slavery and ignorance, the people of this country, in particular, at last emerged from the darkness in which they had been enveloped, and have rapidly advanced of late to the attainment of that importance in the state, which, it is my fervent wish, might increase, but never be diminished. It is with extreme regret, however, I feel myself called on to acknowledge, that close observation has convinced me, the people must look sharply to their own interest, and not be too confident in the professions of their advocates. I do not confine myself to little politics—for, on that subject, they are intent to excess, in general; but I do call the attention of the public, in a very marked manner, to the conduct of the *landed* interest.

In contemplating the relation of the people with the latter, it should be constantly present to our minds, that it is in the power of him who

has the fee to refuse to grant a freehold tenure; and, consequently, that such persons have an arbitrary controul over suffrage or the elective franchise. Of course, they may, by law, create as many forty-shilling freeholders and other dependants, as will, by calculation, suit their electioneering objects; but let to all others for *term of years* only: and thus remove almost the possibility of opposition from men of public spirit, education, and independence, whatever might be the amount of their chattel property.

In proof of the jealousy with which the landed interest, as well as every *excluding* and *exclusive* interest, should be viewed by the state, one has only to look at the statutes of 2d of William and Mary, the 4th and 11th of George II. This brings me at once to consider the last stronghold of the advocates for legal oppression, in which I undertake to say, that they shall be signally defeated.

Their proposition takes for granted, that the 2d of William and Mary, c. 5, *altered* the law of *distress*, by empowering landlords to *sell it*, under the circumstances specified in the act. Now let the act speak for itself on this very interesting question.

The preamble runs thus:—"WHEREAS the most *ready* way for recovery of arrears of rent is by distress, yet such distresses *not being to be sold*, but only *detained as pledges* for enforcing the payment of such rent, the persons distraining

having little benefit thereby: for the remedy whereof"—“be it enacted,” &c.—“that where any goods or chattels shall be distrained for any rent,” &c. such goods and chattels, &c. *may be sold in five days* inclusively from the levying of the distress, unless such goods, &c. be replevied in the intermediate time.

It is scarcely requisite to say, that the enacting clause is a remedy for the evil set forth in the preamble, and gives power to the landlords, who had been till then *restrained* from selling the distress, *to sell* the same, according to the provisions of the act. But the original right of the *landlord* to distress is not even touched upon, otherwise than to recognize it, and to assume, in the way of recital, that distress shall, first of all, be levied, as at common law, *before* the goods or chattels can *be sold* under the statute.

In proof of this, if demonstration itself should be questioned, the second clause is decisive; for, in that, the remedy of distress, as such, is *extended expressly* to “sheaves or cocks of corn,” &c. which could not have been distrained previously for rent; and it is accordingly enacted, “that it shall and may be lawful to seize and secure the same,” and to sell it as distress, unless replevied in five days.

It is perfectly clear, therefore, that the legislature did not contemplate, intend, or make any alteration whatever, as between *landlord* and

tenant, in the remedy of distress at common law: of course, those landlords, and those only, who were entitled to levy it of common right, that is, by the common law, are still entitled to levy it, to the exclusion of all *lessees* or derivative lessors, no alteration having been made, in this respect, by any statute.

The 4th George II. c. 28. entitled, "An act for the more effectual preventing *frauds* committed by tenants," &c. and complaining of the "inconveniencies" by "reason of the many *niceties* that attend re-entries at common law," extends distress to rents seck, rents of assize, and chief rents, because "the remedies for recovering such rents are *tedious* and *difficult*." But there is not one word about landlord and tenant in this fifth clause.

The next clause, which enacts, that chief leases may be renewed without surrendering all the under leases, lays hold of the *derivative* lessors, and distinguishes them by their very tenure; for it charges upon the occupants, that they used sometimes to refuse to surrender their under leases, "to the great prejudice of their immediate landlords, the *first lessees*." So that every doubt is removed, if a doubt could have previously existed in any man's mind, respecting the subject: for, when the legislature wanted to point out those *first lessees* for a particular purpose, it calls them by name, and thus sepa-

lumniating and oppressing the tenantry, may be said to have introduced the most unprincipled and extravagant innovation that has ever been termed law in any part of the civilized world.

What! shall the doors and windows of the house of a British subject be smashed to pieces by an armed banditti, on bare *suspicion*? Shall he see his goods and chattels swept away, under the pretence that it is the property of a stranger? Shall his castle afford him no protection against this vigour beyond the law, or the outrages of stiletto-men?

One would think that landlords had no remedy for recovering rent and arrears but distress, which was insufficient without the power of *selling*. This is not the fact: they are entitled to several remedies, every one of which would enable them to recover, but then it should be by *due process*; consequently, all lessors, not only the head landlords, but their "lessees," when they underlet, prefer, very naturally, the rapid and overwhelming engine of distress, which they have made available by *sale*, under the statute. Before this, as a remedy, it was useless, but now they possess it to their heart's content, and may crush the poor and friendless without fear or responsibility.

Besides the nature of the times, there was one reason, amongst many others, which made distress necessary for an English baron, or seig-

nior, in ancient days: namely, that if he brought an action at law against his villein, this would amount to manumission, or a grant of the villein's freedom; for, having it in his power to seize every thing by distress, if he neglected to levy, and preferred an action, the law, which always leans to the weak and to freedom, would imply that the lord had put himself on an equality with his villein, and hence the latter should be entitled to the benefit of the law's presumption.

Let us see what was the state of things even in the reign of Henry III. The 4th clause of the statute of Marlbr. chap. 1. enacts as follows:

"All persons, high and low, shall receive *justice* in the king's court."

5th Clause. "None shall take any distress of his *own authority*, without award of our court, in pain (upon conviction thereof) to be punished by fine, according to the trespass, and the party grieved shall be also recompensed his loss."

By the statute of Westr. 1st, c. 17, 3d Edward I. it is enacted, that "If beasts be impounded in a castle or fortress, *the king* will command that fortress to be *demolished*, and the plaintiff shall recover double damages against the lord or impounder; or, if the impounder be not able, then against the lord himself only."

By the 13th of the same "noble king," it is ordered, that "No distress shall be taken but

by bailiffs, *known and sworn*, in pain to restore damages to the party grieved, and to be *grievously punished by the king*.

Candid reader, turn over the modern statutes, and then look at the decrees of the great Edward in favour of liberty and his people. Contemplate and study his view of the peasantry, that virtuous and original class of men, of whom the severe Roman has said with delight, that they are *virī fortissimi—milites strenuissimi—et minime male cogitantes*.

An impression has, indeed, gone abroad, that this abuse of law is sanctioned by the judges, and that it is the practice; that, in fact, those learned personages have countenanced the subversion of every principle of justice, by ruling that middle-men have a right to levy distress successively on the occupants, for rent due to and for themselves, on their respective contracts. I beg leave, however, to deny the charge brought against them, and to vindicate their characters, as well as the venerable name of the law of England, from such a foul aspersion. There is not a single case or authority extant, to sustain this abominable imputation cast on the learned judges; not a *dictum* to support the gross attack made on their understandings, or to justify the most remote suspicion of their purity and honour. The thing is impossible; it makes no

matter, therefore, what superficial persons might think or assert on this great question.

In reference to Ireland, particularly, the statute of the 15th Edward IV. makes it *felony* to levy distress "contrary to the common law." I have to acknowledge my thanks to Sir John Newport, for his attention in reminding me, that this beneficial act is still in full force. Every middle-man, therefore, who distrains, violates not only the statute of *Quia emptores*, but incurs felony.

Let us now consider the *expediency* on which the landlords insist for the continuance of distress, and mark its operation. Is it founded on law, on reason, or policy? No; what then? Why, they contend that they may act in defiance of the law, and turn their backs upon justice; that laws were made for slaves, but not for landlords; that distress is a remedy, superior to every regular and civil institution, intended for the lords of the soil, as the vicegerents of heaven: that they may therefore exercise it arbitrarily, and ruin the poor friendless tenants with impunity. Law indeed!

A landlord would snap his fingers at any man who should say, that it was at all necessary for him to submit to ordinary rules for the recovery of his rent; and he will even audaciously mention, at times, the *legal* remedies to

which he is entitled, in order to vilify them by comparison with *grim distress*.

Yes, he says, I may bring my action of debt for rent—I may have actions on breaches of covenant, &c.: but all these are remedies *at law* and by *due process*; there is a vulgarity in their “niceties” to which a landlord ought not to stoop. As the statute 2d William and Mary very properly recites, in its preamble, distress itself was not sufficient without sale; for, till then, a landlord was restrained, and could not oppress the tenantry, without incurring prosecutions and penalties: but now, by virtue of that and subsequent acts, a landlord’s *will* is the law, in reference to distress. The poor man must submit, or be crushed for ever. Things are in the present day as they should be; the practice of landlords accords, not only with the feudal law in the worst times, but with a state of nature.

My lords and gentlemen, you are indulging in false security; what you state is not the case, for the law does protect the beggar as well as the landlord; its principles on this point are immutable. No act of parliament could overturn this *equality* of British justice, without denouncing parliament itself. Its omnipotence could not save it from dissolution, or maintain an act of legislative insanity.

Your vigour beyond the law is tyranny—your remedy of distress and sale cannot square.

with any rules of civilization, or coalesce with any principles of common sense and humanity; it is founded in the most barbarous despotism, and executed, in general, by the dregs of the human species; it is levied, without the interposition of any form of law, by vile miscreants, depraved instruments of subornation and perjury; it originated in times when, as Littleton says, the hangman's office was a *tenure* to which *distress* was incident.

Know, therefore, that if death were to ensue through the derivative lessors, or their agents, in levying distress on the occupants, for rent due to such lessors from their lessees respectively, it would be murder in all of them, as principals and accessaries, and subject them to the hangman's very *ancient tenure* and its incidents.

For the better understanding of this question, let me ask, Is the service of fealty *inseparable* from the reversion? and is distress *inseparable* from fealty? The answer must be in the affirmative. How, then, can a derivative lessor, who is a lessee, entitle himself to the use of the head landlord's services and their incidents? By reservation. Why should he possess himself of any right belonging exclusively to the lord in demesne, because he chuses to make a reservation of it between himself and a third person, his own lessee?

Distress belongs exclusively to the services

due from the lessee; and if the latter were to reserve it, the reservation would be void from the beginning, as a violation of law, or an usurpation of the rights of others. If the lessee of the proprietor were, in this case, to reserve fealty, or the head rent, to himself in the indenture to his own lessee, should he, by such reservation, be entitled in law to the one or the other?

But if not, why, on principle, should the law cast upon him any other right or exclusive property of the reversioner? The principle is the same throughout, and is incapable of being resisted.

The derivative lessor is, therefore, as to distress, a wrong doer *ab initio*, or from the beginning. He cannot plead any justification whatever, and least of all, that of necessity, for he has other remedies in abundance. *He does not want bread*, and when he takes from his master, it must be *animo furandi*: his guilt is evident, his villainy is manifest to all the world.

If he were to reserve by indenture, that, as often as he might meet his tenant, it should be lawful for him *to pull his nose*, would his covenant legalize the outrage? If not, why not? Because an illegal act cannot be reserved to himself by any man. But the derivative lessor robs the head landlord of the arms which he had for his own security and the protection of his land; then he puts the tenantry in fear,

and compels them to deliver instantly all they possess, with which he flies, or holds at arm's-length both the head landlord and the plundered occupants.

His reservation of distress is contrary to the statute of *Quia emptores*, or common law, of which it forms an integral part, being that *Lex scripta*, like *Magna Charta*, which is embodied into the common law, called, in general terms, *Lex non scripta*, in conformity to the appellation of that consolidated mass of customs of which no written trace is to be found.

Even the *rent* reserved by him is the produce of his contract, and not *rent service*; the money he reserves to be paid to him is a mere sum *in gross*, like the price of a bag of hops or any other commodity. It is the value of those things which he may sever from the freehold—goods and chattels which shall pass not to the heir by descent, but to the testator's executors, or administrators, as personal property. But he cannot touch any thing forming a part of the freehold—a door, or a window, or any fixture. He shall not cut a tree, without special licence, because it has its roots in the land, and belongs exclusively to the head proprietor, who possesses all above his estate, to the utmost boundary of imagination in the firmament, and every thing *downwards*, as far as the hither bank of the river Styx.

It might be even a nice question of law, whether the half of this celebrated river meandering along his demesne, does not belong to him; and, consequently, whether a head rent be not due from the ferryman, and subject to the remedy of distress?

No convention or agreement will ratify *malum prohibitum*, any more than *malum in se*, or entitle one man to wrong another. Would any individual who might, in vacation, or when the courts were not sitting, dress himself in the masquerade robes of a judge, and take his seat on either of the judicial benches in Westminster Hall, be, on that account, one of the real judges of England? If a person were to wrench the proper stave from a constable, should he be constituted by his illegal act an officer of justice? Surely not. But what is the difference essentially between this procedure and that of the derivative lessors?

They levy distress, as landlords; they sell the goods and chattels, as landlords; they appraise, and employ drivers, as landlords; they extend the remedy of distress, as landlords, to those things, on which, till the 2d of William and Mary, it had never operated. If a tenant run away with his goods, &c. clandestinely, they pursue him, as landlords. They distrain, as landlords, for rent, the goods and chattels of strangers found upon the premises. Every one of them reserves rent *à lui*, as a landlord.

Now, the question is—Are they landlords at common law for any of these purposes? For, if not such at common law, they cannot be landlords at all, the statutes having made no alteration, as between landlord and tenant, respecting the remedy. Distress is the *antecedent* from which the whole machinery of the statutes on this subject immediately follows. If distress be not levied according to common law, every thing done under the statutes referring to it, must be wrong.

We come then, at once, to the material point on which the entire subject turns; for we have only to ask, Could a derivative lessor, lessee, or middle-man (as he is generally called), levy distress at common law? He could not. Common law does not, at this moment, recognize any such person; *rack rents*, and the whole brood of lessee-lessors, with all their mischief, were hatched by the tyrant Henry VIII. and are unknown to the common law of England.

Therefore, all derivative lessee-lessors, or *rack-rent* middle-men, who levy distress, violate the statute of *Quia emptores terrarum*, as well as the common law, strictly understood, by which they have no rights, privileges, power, or existence.

If it were allowable for lessors to reserve the remedy of distress on *contract* only, without exercising it as the right of a landlord, then it

should be extended to all manner of contracts. A grocer may levy distress for figs and almonds. One man would be enabled to seize on another's property without due process, or other authority than his pleasure, enforced by superior strength or dexterity. The judges and the lawyers should give up their profession, and stay at home to guard their property.

Such an extension as this of the *just*, the *civilized* remedy of distress, would, undoubtedly, give employment to all the poor in the country, and furnish them, for a time, with ample means of subsistence. But what would be the end of it? Anarchy, carnage, and revolution.

When the horrid scene is brought home to one's door, all men tremble at the consequences; but have they no feeling, no sympathy for the wretched peasantry, who are visited twice a year regularly with such oppression? The mind shrinks back overwhelmed with anguish from such inhumanity, and on recovering itself, loudly *demand*s justice for the people.

The excellence and purity of the common law principle on this question, cannot be better illustrated, than by conceding, for a moment, to the advocates, that middle-men have an original right to distrain, or may acquire it by agreement. What would be the effect? That the rich may harass or ruin the poor; that

violence may supersede due process; that the will of a local tyrant may defeat Magna Charta and the statute of Quia emptores; that the passions may govern the laws, and the people be left without redress for their grievances. Now let us exemplify this by facts that are indisputable.

Supposing the occupant to have paid the entire rack rent to his immediate lessor, who fails or refuses to pay his own lessor; the whole chain of middle-men may, according to the advocates, come down together, like harpies, on the poor wretch, and sweep away, each, whatever he finds on the premises; and they may keep pouncing thus whenever any prey is visible, till they shall be glutted.

But this is not all; for, after the unfortunate man shall have satisfied all these mesne lessors, still, if he be not able to pay the head landlord, he may be ejected.

It was said by a great and learned personage, in a certain place, which it would be irregular, it seems, to mention, that the head landlords in Ireland seldom distrained on the occupants, but usually had recourse to ejectment; and that if the rent were paid even in six months after recovery, that the tenant should be reinstated.

All this is perfectly true, but it ruins the occupant. He must either pay the head landlord, after having paid all the derivative lessors, or

be turned out of possession, not for any act of his own, but as a penalty or forfeit to expiate the crimes and infamy of others. The head landlord is not, however, entitled to any compliment on the score of indulgence, for his object is to raise his rent by having the benefit of a *re-letting*. Instead of affording protection to the tenants, he inhumanly grinds them into *itinerant beggars*.

The act which empowers the landlords to do this, is the 4th George I. Irish Statutes, which recites a great part of the 11th of Anne, to veil the prostitution of justice and the most unparalleled infamy towards the miserable and unprotected occupants.

It is impossible to dwell on this subject without shedding tears over the afflictions of humanity, and execrating those great delinquents, who constantly abuse the law, and deliver the people over to the common enemy, by their vexatious oppression.

All this sad variety of despotism is, say the advocates, the law of England; for, if the tenant enter into a covenant of distress, he shall be liable to it as the result of his agreement. It is conceded, that a tenant, or any other person, may enter into any covenants that are legal. If, however, an obligation be *void* at law, it should not be executed. The levying of distress by middle-men, who are not entitled to *rent service*,

is void at law; therefore, any obligation to this effect must be void, and should not be executed.

No new agreement can make a *void obligation* better, the original corruption will infect it throughout.

New agreements and new terms may confirm what might otherwise admit of a question as to their fairness, per Lord Hardwicke in *Ches-terfield v. Jansen*, 1st *Atk.* But, in *Sherley v. Martin*—a famous case in the Exchequer—the court were of opinion, that contracts avoided on reason of *public inconvenience*, would not admit of subsequent confirmation by the party.

Therefore, if the successive middle-men derive their claim from the first lessee, his corruption or incapableness shall infect them throughout, according to the above axiom.

And, as all the contracts by derivative lessors reserving *distress*, which is *inseparable* from *fealty*, at the least, are contrary to common law, and avoided on reason of public inconvenience, by the 18th of Edward I.; therefore, they do not admit of subsequent confirmation by the party—that is, the law will not legalize the transaction, however willing the obligee might be to acquiesce in it.

In these fixed principles we discover the absurdity of equivocal propositions, such, for instance, as *Conventio superat legem*, the literal translation of which is, that a convention, or the agreement of parties, supersedes law. What a

prospect of happiness this view of justice opens to the world! what benefit, what encouragement, what delight human nature contemplates through this dreary vista! All our maxims are suddenly overthrown, and the sweet minstrelsy of confusion follows.

But such is not the case: even this general proposition is sound law, in legal acceptation, and is comprehended in the words of Lord Hardwicke just mentioned. What is voidable may be ratified by the act of the party. An infant, on coming of age, may make himself liable for a contract entered into in his infancy, which he might have avoided, &c.; but nothing void or repugnant from the beginning, shall be made law by the caprice or will of any party: for example, there cannot be a rent seck issuing out of a term for years, by virtue of any agreement between parties. Usury is a convention between parties, yet it is illegal, and shall pay the penalty when detected.

These few apposite illustrations will, I trust, suffice to vindicate the law of the country on this subject, and shew the fallacy by which the advocates endeavour to maintain oppression. But all this is law founded on reason, and not on the caprice of landlords.

The law is called *rectum*, says Lord Coke, in his explanation of Magna Charta, because it discovereth that which is tort, crooked, or

wrong, "recta linea est index sui et obliqui."

—This is the most accurate definition that has been ever given of the law of England: it is mathematical demonstration; for, as we discover a crooked line by having a previous idea of a straight line, so we find out *wrong* by our knowledge of right. "Hereby," observes that great man, "the crooked cord of that which is called *discretion*, appeareth to be *unlawful*."

According to this notion of law, and the rules of equity, the remedy of distress, not only as against third persons not comprehended in the *contract* of the immediate lessor or lessee, but against such lessee himself, is fraudulent and unequal. It is fraudulent in a general sense: because such lessor represents himself to be a landlord at common law, and one consequently entitled to distress of common right; but he is knowingly a lessee, in fact, with respect to the landlord at common law: therefore, the former represents himself to be what he is not, and his claim to distress of common right is consequently false and fraudulent. He comes under that head of equity which establishes, that one suing as a plaintiff, "who hath committed iniquity, shall not have equity."

In this case, analagously to the principle of that of *Chesterfield v. Jansen*, which has classed all the cases on the subject of confirmation, it is perfectly clear, that the original contract being

illegal, no subsequent agreement or ratification by the party can give it validity; that is, however long lessees might have submitted, through ignorance, deception, or otherwise, to the distress of the middle-men, they are at liberty, notwithstanding, to declare the right unfounded, and the act illegal.

At common law, as well as in equity, under the head lately noticed, there might be an implied as well as express confirmation; for instance, by accepting rent, or the like—3d *Co.* 65, *Co. Litt.* 235—founded on this reason, that the law will never intend a wrong, if the act may, by fair construction, be made legal, *Co. Litt.* 42. Thus, if an infant, after his full age remain in possession of lands demised to him during his infancy, he affirms the lease, and makes himself liable to the arrears of rent incurred during his nonage, 1st *Rolls Ab.* 731.

The *validity* of contract at law forms a prominent feature in the case when relief is sought in equity; for in all those cases which have received from courts of equity a different construction from that which they have received at law, the construction must be referred to the difference of the subject matter, which difference in the subject matter would have produced the same difference of construction in the very same court.—See *Fearne on Cont. Rem.* 220. But equity does not dispense with legal requi-

sites to the extent of overthrowing them ; on the contrary, it gives effect to the law by decreeing that which ought to be done ; and, for this purpose, relieves itself *pro tempore* from that which was a bar at law. But at law, the forms, requisites, and constructions shall remain unaltered.

Coming now to the application of these principles, we shall find, that however broad and general they exist, yet that neither at law nor in equity can the occupants have effectual relief from the oppression of the middle-men, *because distress is a remedy which does not fall within any rule of justice.*

In the present acceptation of distress by its advocates, the derivative lessor may levy it on the occupants, for the rent due to him from his immediate lessee, or upon any one of them, if such lessor let the entirety, which might be afterwards distributed or parcelled out into any number of farms : under those circumstances, he may levy distress as a landlord at common law. It is undeniable, therefore, that every middle-man may, on the same alledged right, do the very same thing with perfect impunity, and by permission of law, rent being actually due : of course, the occupant or occupants cannot bring replevin, for no wrong has been done to them, the remedy of distress being consider-

ed the legal right of every one of those landlords.

Against all or any one of the lessors above his own immediate lessor, the poor occupant has no redress; for if one of them who had received the rent should fail in paying to the next lessor, the occupant could not compel him to make compensation in any manner: if he were to bring an action, such lessor would plead, that he had no *contract*, no *privity* whatever with the occupant; that it was a most shameful and illegal attack to rob him (the derivative lessor) of his property; that he did not levy distress by virtue of any *contract*, but that his right to distrain arose *dehors* his agreement with John Anoakes, the third landlord from the occupant. Thus he may come into court with a palpable lie on his lips, and stand upon legalized usurpation in the face of the world, deriding the occupants, as well as the law of the land, and exclaiming with a sneer, "*Consuetudo vincit legem.*"

Now let us see what relief a poor man might be entitled to have, or receive, from a court of equity, in a case of this kind.

By the statute 4th George II. a tenant ejected for non-payment of rent, may, on payment, be reinstated any time during six months after recovery in such action. The court, however, is

strictly limited to the case of *ejectment* on *non-payment* of rent; that is, it cannot afford relief, under the statute, upon any other ground: and even where a breach of covenant is mixed with the claim of rent at common law, equity cannot well separate the legal rights, so as to bring the case within its jurisdiction, on *non-payment* of rent, specifically under the statute.

In a mixed case of this kind, *Wadman v. Calcraft*, 10 *Ves. Jan.* 544, being an appeal from the Master of the Rolls, the Chancellor directed an issue. But a tenant has no other redress at law, or in equity, against the remedy of distress, than replevin, supposing him even not to owe a farthing to his landlord: so that in reference to the first cause of all his wretchedness, a poor tenant might as well amuse himself in whistling "Lillibullero" with that good-natured man, Uncle Toby, as be at the trouble of running after lawyers to relieve him from this oppression; for the answer would be, Bring replevin. If he were to say, I have neither friends nor money, the landlord has taken all my property—answer, Then you may go about your business or hang yourself.

This equity, given by the statute, instead of being an alleviation of the misery of the occupants, is an increase of their hardships, because they must pay the rent to the landlord,

in order to qualify them to receive this act of grace ; that is, to be left in, or restored to the possession of the premises. The money must be brought in and paid at all events. The Chancellor is not at liberty to try the right of levying distress, which enabled those middlemen to sweep every thing away both from the head landlord and the occupants, the consequence of which was ejectment.

But the reinstatement of the occupants, which means the payment of the landlord's rent by them, would restore the intermediate oppressors also to their supremacy and despotism. So that having paid the rents in gross of all these tyrants, including the head rent, even after ejectment, within the time specified, still the occupants would have purchased, substantially, nothing more than the continuance of their wretchedness and slavery.

The Lord Chancellor would certainly feel pain at being obliged to expose any poor man to such inhuman practices ; but if he were himself an occupant under those circumstances, he should submit to be fleeced like the peasantry : and one may, therefore, easily imagine, that a mild and merciful judge would be greatly chagrined on reflecting, that the unfortunate tenantry could have no sort of redress at law, according to the advocates of oppression.

Thus is easily traced the dreadful consequence of violating any principle of law to suit a party or meet a particular emergency. The criminal law has, till lately, abounded with anomalies of the one, and the statutes empowering *sale* in order to give effect to distress, are frightful examples of the other.

Besides the power of selling distress for rent if not replevied within five days, and the extension of the remedy also under the 2d of William and Mary; the 4th George II. enacts, that the lessors of the occupants may renew their leases without the surrender of leases for this purpose by the occupants. This clause deprived the latter of the advantage to which they were entitled of making terms for themselves with their lessors on such renewals; than which nothing could be more just or rational, for they had raised the value of the land by their cultivation; and in consequence were, and all cultivators are, fairly entitled to make the best conditions in their power with the kites, or paper-landlords.

But, instead of feeling for the poor people as they ought, the head landlords made common cause with the intermediate *lessees*, whom they denominate as such in the very statute. They did not stop here, but went on with their work; and accordingly, the 4th and 5th Anne, and the 11th George II. deprived the tenants

of such benefit from attornment as was left by the statutes of *Uses* and *Wills*. Before attornment, the grantee could not bring an action or *distrain*. So one may judge how this statute has affected the occupants.

But the great advantage was, that the people could not be turned over by one landlord to another, and so on *in infinitum*, like *villeins*, without asking and receiving their consent. I say, that this was a state of comparative liberty and independence, from which those acts have degraded the tenantry of the kingdom, merely to afford facilities to the landlords, who considered any curb on themselves vexatious and intolerable.

Surely, if they deemed such alterations of the law expedient, they ought, in honour and common honesty, to have made some recompence to the tenants, either by giving them freehold tenure, or granting long leases, or by abolishing that most dreadful inquisition, the remedy of distress in its present form.

Besides these extraordinary clauses, it was further enacted, by the latter statute, in substance, that any misconduct in levying distress, "any irregularity or *unlawful* act," should not make the landlord, or his bailiffs, drivers, or any of the miscreants employed on such occasions, trespassers *ab initio*; but that tender of amends made should be ample satisfaction, and screen the ruffians from a court of justice.

The effect of this clause operates obviously in a way to prevent a poor man from going to law at all, and, of course, from ever receiving any adequate damages.

The last clause in the act of the 11th George II. is so worded, and drawn with such menaces against the sheriff, and acrimony against the tenantry, that a poor man can never think of applying for replevin.

It is said, however, that an occupant takes subject to all encumbrances. This proposition, which affects to be universally true, is false; for some encumbrances on land cannot, from their nature, encumber or touch the *occupant*; whilst others, from the *mode* and *time* of their operation, might not take effect during the occupancy of any one in particular. To prove this, let a marriage settlement be taken, and it will be seen that most of the parties named, as well as those who might become parties by operation of law, have various and distinct interests, both in *quality* and *duration*: therefore, the premises are not only untrue, but when distinguished into parts, each part forms a *mis*t proposition; and thus the major is not only wrong as a universal proposition, but every proposition it contains is the reverse of being *simply* true.

I am willing, however, to allow the full benefit of it to the advocates; and as far as encumbrances, charges, &c. form the subject of *con-*

tract, I admit, that, limited to this *antecedent* is correct and applicable consequence must be the same in all as to the *effect*; namely, that the co parties, or those who might become co parties by operation of law, shall be to the *extent* of the contract, and no farther.

No one but the head landlord has an right to levy distress.

But a derivative lessor cannot be the landlord for this purpose.

Therefore a derivative lessor cannot an original right to levy distress.

It is then said, that distress is incident to rent; but a derivative lessor is entitled to rent; therefore a derivative lessor is entitled to distress.

I deny the first of the premises and the inference. The major proposition affirms what is not true: distress is not incident to rent such, nor at common law, without service. The minor affirms what is not disputed, and what does not relate to the matter of the syllogism (distress): therefore the conclusion is formed on false premises, and must be wrong.

Contract binds the contracting parties only, or such as might become parties by operation of law; but all parties shall be restrained within the rules and limits of contract; therefore, derivative lessors, as parties, shall be restrained within the rules and limits of contract.

Occupying tenants have no contract with the middle-men in question. Contract binds none but contracting parties (*forma et modo*), as already stated; therefore, the occupying tenants cannot be bound by the middle-men in question.

The middle-men in question levy distress on the occupying tenants, as they say, of common right, but they have not distress by common or any right; therefore, the middle-men in question cannot lawfully distrain the occupying tenants.

But what has produced this melancholy train of evils, this prostitution of the national character, this violation of honour and high spirit, this dereliction of virtuous principles? What but the cupidity of the landlords, the corruption of the times, the love of guineas. What was, and still continues to be the immediate cause of such calamity? The remedy of distress and sale. What is the mediate cause of our domestic troubles, of discontent amongst some of the people, and of the disaffection of others? The monopoly of land, which compels the bulk of them to resort to adventitious and uncertain means of subsistence—means which fluctuate between peace and war, and might be extinguished by the latter.

Besides, this monopoly keeps the great mass of cultivators in a state of continual poverty,

with very few exceptions; for, by short leases, the landlord is always availing himself of the *improved* value of the land, which he lets at a rack rent to the highest bidder, who in his turn is also thrown out of possession: and thus the almshouses will never want a supply of ruined people, as long as monopolists shall be permitted to deal with the land as their own, to the total neglect and exclusion of the interests of society.

This is more or less the condition of land all over Europe; but in those parts of the Continent that are somewhat civilized, the state of the peasantry, as to tenure (I do not speak of personal liberty), is much better practically than under the laws in Ireland. And, for this reason, that the feudal tenure is more pure; that is, the great proprietor, like the great proprietors, at one period, in England, maintain a direct controul over the cultivators; but this is softened by affording them, as peasantry, every possible attention, and treating them with kindness. It is, in fact, tenure in chivalry, which binds the parties by the honourable tie of obedience and protection.

The doctrine of *warranty*, which has long been disused in this country, exists in full force in the principalities of Germany; also in Poland and Hungary, with some variations. Under this alone, and all its ramifications, the cultiva-

tors are well secured from the oppression of a second landlord, and against every landlord, if they fulfil the specifications of their tenure, which are very simple—See *Sir M. Wright*, and *Commentaire du Basnage*.

The tenantry of this kingdom have a set-off against the monopoly of land, in the many advantages which they possess, in an eminent degree, under our happy constitution. But with respect to land, their condition is what some have well called *commercial feudalism*.

The tenure of every man is strictly feudal in its origin, or referable to it by analogy. With this, however, the general principles of liberty are so intermixed, that, practically, the feudal parts are unobserved by all; and, in fact, are incapable of being put in practice by the occupants, or cultivators of the land. Hence there is no direct or controuling power in a landlord now over his tenant, as was the case during the period of simple, and afterwards of impure feuds. From the moment of the execution of their agreement or leases, &c. the one is independent of the other, within their respective covenants; and hence the landlord feels himself dispensed from every immediate or relative connection, which in former days had subsisted between him and his tenant.

He says, that the law has raised a kind of

partition between them, and that he is freed from any tie of obligation, of kindness, of generosity, or of protection towards people who are *equal* with him in law, and who may have abundant redress for their grievances. He looks on them, therefore, with the same indifference, as to their prosperity, that he does on all other members of the community, saving and excepting the hawk's eye with which he glances over the premises and watches the payment of rent.

All this is true to a certain extent, and argumentatively correct; but yet it is surface, without depth or thickness, in reference to the poor tenants: they know, indeed, that they enjoy personal liberty—that they may dispose now, by last will, of their personal property—that all taxes must be levied according to law, and originate with *their* representatives—that a whiskered baron cannot, in the present day, command a virgin bride to be delivered up to his loathsome embraces by the father and husband, who were sometimes obliged to be spectators of this scene of prostitution and barbarism.

But what have the landlords to do with all these benefits conferred on the people? To whom do the latter owe their liberty, their rights and privileges? To the landlords? To the great proprietors? No; but to a combination of ex-

traordinary circumstances, which could neither be foreseen nor resisted. Kings, nobles, popes, bishops, and monks, who hated the people with malice prepense, yet having occasionally hated one another more, made themselves, or were miraculously made, the instruments of Providence, through whom the people have risen, and stand, at present, on the ruins of the most hideous tyranny, both of mind and body, that can be imagined.

The landlords would insinuate, however, that the blessings of liberty resulted from concessions on their part, and that all the property issuing from land is theirs of common right;—that when they enter into contract with a tenant it is a kind of benignity or condescension, because they *may refuse* to let their ground.

This argument shall be disposed of as it deserves, and that is, with contempt and brevity; only observing, that if they were to persevere in refusing to let their ground, the government would let it for them, from necessity, or to guard against famine and the ruin of the country; considering, very properly, that, in point of fact, the land belongs to the nation or people, and is only partitioned out, or distributed according to various modes and tenures, for the good of the whole community.

But when they let, do they not take care to

preserve the monopoly, and to avail themselves, in general, of every opportunity by which they might have a *re-letting*, and uphold the remains of the feudal system? Do they not preserve that part of it which the law calls "base tenure?" Might they not withhold a freehold lease, and refuse to let but on terms for years, during the continuance of which, the tenants can have nothing to do with the laws, constitutionally speaking, but to *obey* them?

In Ireland, a great many landlords have lately called on the poor tenants for what is termed the *dead half-year's rent*, which was to have remained unpaid till the last year of the term, under the most solemn pledges which could be given; and most of the landlords are now doing the same thing. I state this fact on the authority of a right honourable member of the House of Commons. The consequence is, that the tenants are unexpectedly distrained for a twelve-month's rent, when they expected to pay only a half-year's rent. To procure this, they are compelled to sell their seed-corn and some of their cattle; and then, on the coming round of the next half year, they must run away, or make some compromise, by which the landlord secures to himself a *re-letting*, for this is the great object.

Hence arise the local feuds and dreadful out-

rages which prevail, to the disgrace of the national character. The people know and feel that the landlords have broken their parol-contract, violated their honour, and *distrained* in order to get an *additional* rent; but as the whole process of ruin is supposed to be legal, the unfortunate peasants, who see themselves robbed in this manner, give way to their impetuosity, and seek redress with a vengeance.

DERIVATIVE LANDLORDS.

WHEN a man is said to be a *freeholder*, it is supposed he is quite emancipated, that he is at the very top of tenure in law: but his freedom is but of a relative kind; that is, he is not as degraded as a man who is deprived of, or refused a freehold tenure. From the highest tenant, down to the forty-shilling freeholder inclusively, those tenants are relatively higher than one another; but they are all as superior, in law, to the richest termor in the kingdom, as my lord's valet is to a kitchen boy, in comparison of their services.

It is true, that the progress of civilization has induced the legislature very properly to interpose sometimes for the relief of tenants; and I am glad to say, that although the *spirit* of the common law does certainly remain, subinfeu-

dation and lettings of ground are practically raised from the abject and slavish condition which anciently attached to them.

All derivative tenures, however, are more or less qualified, according to their nature, and cannot therefore be clothed with the rights of landlords, as of original or common right—I am speaking strictly of *landlords* and *tenants* at common law and under the statutes.

The relative situation, in our time, of derivative lessors and occupants, bears a very close analogy to this ancient state of things. The former, who, with respect to the head landlord, are all lessees, having, through courtesy, received the honorary title of *landlords*, forget their actual state in an instant, and instead of accepting the favour with thankfulness, proceed to depose the head landlord, and act the part of usurpers.

One might indeed predicate of “clapping a beggar on horseback;” but the most intense exercise of ingenuity could not foresee, that a “base villein,” in law, would presume to claim, as his original right, the honours and privileges of an English baron.

Let us now examine their pretensions, and see how they have sprung. Does the head landlord grant the power of levying distress to his tenant? Never; the grant would be absurd:

but he does usually reserve the power to himself, though it is not necessary, of levying distress, if the rent should not be paid on the day agreed on. Whenever a clause of distress is reserved, it must be in the nature of a penalty against the lessee, and not as a privilege conferred on him. If the landlord were inclined to give the power to his tenant, the grant would be of no avail whatever; he himself has it by law, and it is the law only that can give it.

It should be always recollected, that the remedy of distress is not inseparable from *rent* as such; for if it were, the legislature would have no occasion to give it by several acts of parliament, to recover even *freehold rents*.

In proof of this, I refer to *rent seck*, which would be a *rent charge* if distress had been reserved in writing; but the neglect, or agreement of the original grantor and grantee to omit the *charge*, makes the thing *seck* or dry, that is, free from distress, in the words of Littleton. The statutes have, however, violated the original *contract* in this respect, by extending distress to *rents seck*, and converting them substantially into rent charges. They gave a power which was not in the agreement, and made it operate upon all *rents seck* which had been paid for the space of three years within the last twenty years preceding the statute.

Did not the legislature, in this instance, inter-

tere with *existing contracts*, on grounds of public policy? and, as the object was, on the whole, very trifling, *a fortiori*, the legislature should now interpose, on the like ground of expediency, to relieve millions from acknowledged injustice and oppression, taking it for granted, that injustice and oppression form a part of the law of England, according to the advocates for the landlords.

Rent itself must be *reserved* by the landlord "à lui," to *himself*, says Littleton, and not to a stranger. The derivative landlord must *reserve rent* in like manner, but as he has not distress of original right, he should *reserve* this also, even against his own lessee, on his own principle.

Rent is much higher in its nature than *distress*; but as the *higher* of the two must be reserved, it follows, that the lesser should also be reserved. They are perfectly distinct in their modes, qualities, and operation. A landlord may bind himself not to levy distress, the law does not prohibit him in this respect: and thus it is established, that distress is separable from *rent* at this day, as much and as distinctly as it was anciently. It was always *incident* to it as long as *service* continued, but *separable* from it on that very ground; whilst *fealty* was, and is, on the contrary, *inseparable* from the reversion.

These, and the other attributes of the head landlord, might have been variously applied

do; but they were all comprehended in reversion or inheritance. This was the air-head from which all the honours and remedies of the landlord sprang; and to we must refer if any difficulty should arise affecting them.

It is of the greatest importance, that, in considering this subject, the mind should always be present to it, the distinction of the law itself on the question of landlords, whom it invariably contemplates as lords in fee; and in speaking of tenants, it means tenants of the *rehold*. But derivative lessors are lessees with respect to the head landlord, and the greater part of them are paying *rack-rents*, which had their origin *within the memory of man*.

It is said, however, that what is complained of, obtains as a common-practice, and should not now be disturbed. I deny the inference at all events, because the antiquity of any practice is no ground whatever for continuing it, if it be contrary to reason, to justice, and humanity. If the inference were allowed, then a highway-robber may, on the ground of ancient practice, demand his clergy, and urge, in support of his claim, that it had obtained for ages, even before the birth of Romulus and Remus. A murderer may trace his claim to the days of Cain and Abel. Therefore, this inference of the advocates is either rank non-

sense, or a pretence for committing the greatest atrocities.

As to the *premises*, they are false, utterly false in law; for I deny that any case, or *dictum* of a judge, can be found to establish the right of mesne lords, middle-men, or derivative lessors, in themselves, to levy distress for *rent*. The question has never been raised, or brought before a court of justice in this shape, or in any other, that has directly or indirectly settled the point for which the advocates of oppression are contending. I state this as an undeniable fact; and, therefore, the practice has never had, nor can it ever receive, one moment's existence in law.

But if the twelve judges were solemnly to declare, that it shall and may be lawful for any number of middle-men to plunder the poor cultivators of the soil, without eventual redress, damages, or compensation for the injury done; and for this purpose should add, that the statute of *Quia emptores terrarum* ought to be considered as repealed, and that the modern statutes in favour of landlords included those *lessees* called middle-men;—if, I say, the twelve judges were to come to this decision, still it would not be *law*; because it would be a decision directly contrary to reason, justice, humanity, and even to expediency. It would be inexpedient, be-

cause it would sanction the most barbarous tyranny, merely to enable lessors, real and fictitious, to recover rent in the most "rapid way," according to the words of one of these statutes; that is, it would empower them to seize at once on the goods of a poor man, without the intervention of a judge or jury, or of any legal process whatever, to establish the lawfulness or the existence of the demand made on the unprotected victim of such a horrid outrage. Landlords have, and always had, abundant remedies by law; but yet, so selfish, so cruel, so barbarous would man be, even in the most cultivated state of society, if permitted to indulge his passions, that he would, and actually does, in the case before us, call the most unprovoked and brutal oppression, his *lawful right*. What a prostitution of law and right! what perversion! what *sporting* with terms, in order to acquire power to trample on the necks of the people!

Here the question naturally arises, How do they become lords of the soil? By what chemical process of law, by what original concoction are they transformed into *landlords*, with liberty, as they, and their advocates assert, to call *wrong* their *right*, and to exercise all the feudal barbarities of the Gothic ages?

This question may be answered with ease, by tracing the mode *practically*.

partition between them, and that he is freed from any tie of obligation, of kindness, of generosity, or of protection towards people who are *equal* with him in law, and who may have abundant redress for their grievances. He looks on them, therefore, with the same indifference, as to their prosperity, that he does on all other members of the community, saving and excepting the hawk's eye with which he glances over the premises and watches the payment of rent.

All this is true to a certain extent, and argumentatively correct; but yet it is surface, without depth or thickness, in reference to the poor tenants: they know, indeed, that they enjoy personal liberty—that they may dispose now, by last will, of their personal property—that all taxes must be levied according to law, and originate with *their* representatives—that a whiskered baron cannot, in the present day, command a virgin bride to be delivered up to his loathsome embraces by the father and husband, who were sometimes obliged to be spectators of this scene of prostitution and barbarism.

But what have the landlords to do with all these benefits conferred on the people? To whom do the latter owe their liberty, their rights and privileges? To the landlords? To the great proprietors? No; but to a combination of ex-

traordinary circumstances, which could neither be foreseen nor resisted. Kings, nobles, popes, bishops, and monks, who hated the people with malice prepense, yet having occasionally hated one another more, made themselves, or were miraculously made, the instruments of Providence, through whom the people have risen, and stand, at present, on the ruins of the most hideous tyranny, both of mind and body, that can be imagined.

The landlords would insinuate, however, that the blessings of liberty resulted from concessions on their part, and that all the property issuing from land is theirs of common right;—that when they enter into contract with a tenant it is a kind of benignity or condescension, because they *may refuse* to let their ground.

This argument shall be disposed of as it deserves, and that is, with contempt and brevity; only observing, that if they were to persevere in refusing to let their ground, the government would let it for them, from necessity, or to guard against famine and the ruin of the country; considering, very properly, that, in point of fact, the land belongs to the nation or people, and is only partitioned out, or distributed according to various modes and tenures, for the good of the whole community.

But when they let, do they not take care to

dation and lettings of ground are practically raised from the abject and slavish condition which anciently attached to them.

All derivative tenures, however, are more or less qualified, according to their nature, and cannot therefore be clothed with the rights of landlords, as of original or common right—I am speaking strictly of *landlords* and *tenants* at common law and under the statutes.

The relative situation, in our time, of derivative lessors and occupants, bears a very close analogy to this ancient state of things. The former, who, with respect to the head landlord, are all lessees, having, through courtesy, received the honorary title of *landlords*, forget their actual state in an instant, and instead of accepting the favour with thankfulness, proceed to depose the head landlord, and act the part of usurpers.

One might indeed predicate of “clapping a beggar on horseback;” but the most intense exercise of ingenuity could not foresee, that a “base villein,” in law, would presume to claim, as his original right, the honours and privileges of an English baron.

Let us now examine their pretensions, and see how they have sprung. Does the head landlord grant the power of levying distress to his tenant? Never; the grant would be absurd:

but he does usually reserve the power to himself, though it is not necessary, of levying distress, if the rent should not be paid on the day agreed on. Whenever a clause of distress is reserved, it must be in the nature of a penalty against the lessee, and not as a privilege conferred on him. If the landlord were inclined to give the power to his tenant, the grant would be of no avail whatever; he himself has it by law, and it is the law only that can give it.

It should be always recollected, that the remedy of distress is not inseparable from *rent* as such; for if it were, the legislature would have no occasion to give it by several acts of parliament, to recover even *freehold rents*.

In proof of this, I refer to *rent seck*, which would be a *rent charge* if distress had been reserved in writing; but the neglect, or agreement of the original grantor and grantee to omit the *charge*, makes the thing *seck* or dry; that is, free from distress, in the words of Littleton. The statutes have, however, violated the original *contract* in this respect, by extending distress to *rents seck*, and converting them substantially into rent charges. They gave a power which was not in the agreement, and made it operate upon all *rents seck* which had been paid for the space of three years within the last twenty years preceding the statute.

Did not the legislature, in this instance, inter-

tere with *existing contracts*, on grounds of public policy? and, as the object was, on the whole, very trifling, *a fortiori*, the legislature should now interpose, on the like ground of expediency, to relieve millions from acknowledged injustice and oppression, taking it for granted, that injustice and oppression form a part of the law of England, according to the advocates for the landlords.

Rent itself must be *reserved* by the landlord "à lui," to *himself*, says Littleton, and not to a stranger. The derivative landlord must *reserve rent* in like manner, but as he has not distress of original right, he should *reserve* this also, even against his own lessee, on his own principle.

Rent is much higher in its nature than *distress*; but as the *higher* of the two must be reserved, it follows, that the lesser should also be reserved. They are perfectly distinct in their modes, qualities, and operation. A landlord may bind himself not to levy distress, the law does not prohibit him in this respect: and thus it is established, that distress is separable from *rent* at this day, as much and as distinctly as it was anciently. It was always *incident* to it as long as *service* continued, but *separable* from it on that very ground; whilst *fealty* was, and is, on the contrary, *inseparable* from the reversion.

These, and the other attributes of the head landlord, might have been variously applied

sub modo; but they were all comprehended in the reversion or inheritance. This was the fountain-head from which all the honours and feudal remedies of the landlord sprang, and to this we must refer if any difficulty should arise respecting them.

It is of the greatest importance, that, in considering this subject, the mind should always have present to it, the distinction of the law itself on the question of landlords, whom it invariably contemplates as lords in fee; and in speaking of tenants, it means tenants of the *freehold*. But derivative lessors are lessees with respect to the head landlord, and the greater part of them are paying *rack rents*, which had their origin *within the memory of man*.

It is said, however, that what is complained of, obtains as a common practice, and should not now be disturbed. I deny the inference at all events, because the antiquity of any practice is no ground whatever for continuing it, if it be contrary to reason, to justice, and humanity. If the inference were allowed, then a highway-robber may, on the ground of ancient practice, demand his clergy, and urge, in support of his claim, that it had obtained for ages, even before the birth of Romulus and Remus. A murderer may trace his claim to the days of Cain and Abel. Therefore, this inference of the advocates is either rank non-

sense, or a pretence for committing the greatest atrocities.

As to the *premises*, they are false, utterly false in law; for I deny that any case, or *dictum* of a judge, can be found to establish the right of mesne lords, middle-men, or derivative lessors, in themselves, to levy distress for *rent*. The question has never been raised, or brought before a court of justice in this shape, or in any other, that has directly or indirectly settled the point for which the advocates of oppression are contending. I state this as an undeniable fact; and, therefore, the practice has never had, nor can it ever receive, one moment's existence in law.

But if the twelve judges were solemnly to declare, that it shall and may be lawful for any number of middle-men to plunder the poor cultivators of the soil, without eventual redress, damages, or compensation for the injury done; and for this purpose should add, that the statute of *Quia emptores terrarum* ought to be considered as repealed, and that the modern statutes in favour of landlords included those *lessees* called middle-men;—if, I say, the twelve judges were to come to this decision, still it would not be *law*; because it would be a decision directly contrary to reason, justice, humanity, and even to expediency. It would be inexpedient, be-

cause it would sanction the most barbarous tyranny, merely to enable lessors, real and fictitious, to recover rent in the most "rapid way," according to the words of one of these statutes; that is, it would empower them to seize at once on the goods of a poor man, without the intervention of a judge or jury, or of any legal process whatever, to establish the lawfulness or the existence of the demand made on the unprotected victim of such a horrid outrage. Landlords have, and always had, abundant remedies by law; but yet, so selfish, so cruel, so barbarous would man be, even in the most cultivated state of society, if permitted to indulge his passions, that he would, and actually does, in the case before us, call the most unprovoked and brutal oppression, his *lawful right*. What a prostitution of law and right! what perversion! what *sporting* with terms, in order to acquire power to trample on the necks of the people!

Here the question naturally arises, How do they become lords of the soil? By what chemical process of law, by what original concoction are they transformed into *landlords*, with liberty, as they, and their advocates assert, to call *wrong* their *right*, and to exercise all the feudal barbarities of the Gothic ages?

This question may be answered with ease, by tracing the mode *practically*.

I do not wish to press this point ; but as many able and enlightened lawyers will, I know, read my observations, I feel it due to my own character to shew, that my view of this very important question is neither partial nor limited to our middle-men.

Wherever the seigniorship is extinguished, at this day, I conceive that the feudal services of the land are *merged* in the sovereign, and that all the tenants in fee, purchasers, grantees, &c. as such, *hold of the lord paramount*, but without *fealty*, or any other feudal service or incident whatever being due to them from their tenants. Such landlords are barred by the act as completely as the mesne lords, that is, as purchasers, grantees, feoffees, &c. were immediately after the passing of the great statute.

But if this measure had never taken place, still our middle-men, or lessee-landlords, could not levy distress ; because, even under the old anomaly, which tolerated the abuses and oppressions of the mesne lords, none but persons seized of the fee could claim any feudal service from the tenantry, or enforce the feudal incident of distress. So that neither *before* nor *after* the passing of the act could lessee-lessors pretend to any such right, if they had existed in those early times, instead of being creatures of yesterday.

Considering it of importance that this little work should be published before Earl Stanhope's Bill is risked in the third stage, the time for which is now fast approaching, I am compelled, therefore, to break off abruptly, and submit the whole question to the reader's liberality, under the great disadvantage of being a rough sketch of my sentiments, as they flowed from my pen in the first instance.

The nakedness of the thought will, however, demonstrate the sincerity of my heart in the cause I have undertaken; a cause from which no power or influence under heaven can divert the humble advocate of the Irish peasantry, till they shall be brought within the laws of England, and effectually relieved from grinding oppression—from a condition worse than African slavery.

I take this opportunity, also, of congratulating the empire, and Ireland in particular, on the noble efforts of the press in support of the people and their just rights; in furtherance of the law of *due process*; in defence of the security of persons and property; in vindication of imperial greatness and national liberty.

Words are too feeble and inadequate to convey to Earl Stanhope the warmth and gratitude which the tenantry of England and the peasantry of Ireland feel towards his lordship, for

the manly, disinterested, and noble exertion he has made to confer upon them, practically, the blessings, in the amplest manner, of British justice.

In the performance of this great work, it is satisfactory to remark, that his lordship was not left *quite alone*: his seconder, Lord Holland, is, therefore, eminently entitled to the esteem of the public for his contribution to the real cause of Ireland.

Let me hope, under all the circumstances of this case, that landlords, of every description, will subdue their angry feelings, and be induced henceforward to blend their interests with those of their tenants in general—that they will encourage and protect them in the pursuit of honest industry—that they will give them an interest in the soil, and thus make the country impregnable with the hearts of the people.

I can assure the reader, that I have no party or political feeling on this or any other subject; and that the warmth with which I express myself, in some passages, is the result of an abhorrence of the *system*, without any reference whatever to persons.

I trust, I understand the laws and constitution of the realm sufficiently, to be impressed with the conviction, that *orders* are necessary; and, therefore, that they ought to be respected: but

there is an extreme of adulation and of passiveness, to which I shall never ~~will~~ to be carried. I detest an unlawful, aristocratic ascendancy, as much as I do the licentiousness of frothy democrats, or the hollow professions of calculating patriots!

If it should be asked, why I did not bring forward the *law* of the case in my last publication, I answer, that I refrained from blending the oppressions suffered by the people, with the dry, legal question; because I apprehended, that the avarice of the landlords would have suppressed their feelings for the wretched state of the peasantry—that their *habits* of oppression would have subdued the first impulse of nature, if I had *questioned their right* to levy distress. I adapted my plan, therefore, to the character of those on whom I meant that it should operate; and I have succeeded in making them confess, and *lament* with the tears of crocodiles, the wretchedness of the people. This was their policy, for they knew that the public had taken a warm interest in the subject; but they felt satisfied, at the same time, that the thing would pass off like a dark cloud, and be quickly succeeded by the sunshine of local despotism.

Prudence demanded that I should not alarm the enemy, or prepare him to ~~meet~~ the attack:

accordingly, Earl Stanhope has, with all the skill, foresight, and experience of a great tactician and able general, *amused* the landlords till he succeeded in raising two parallels ; and the consequence is, that his lordship having battered and made a practicable breach in the *body* of the feudal system, there must be a *capitulation*, or the sons of Erin will *storm it* with intrepidity, shouting—The laws ! Victory and Old England for ever !!

THE END.

A vindication of the law of En
Stanford Law Library



3 6105 044 276 108

DEMCO
PAMPHLET BINDER
Lithomount